THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 20209 OF 2005

-

Dated: 15-11-2005

Between:

K. Netaji Prasad …Petitioner

A N D

1. Serilingampally Municipality,

rep. by its Commissioner, Ranga Reddy

District and another …Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 20209 OF 2005

O R D E R :

1. This writ petition has been filed by K.Netaji Prasad assailing the action of the respondents in refusing his building permission application on the ground of pendency of First Appeal No. 829 of 2003.

2. The petitioner is owner of the house plot admeasuring 200 square yards, situated in M/s Adityanagar Welfare Association, Madeenaguda, Mandal, Rajender Nagar Taluk, Ranga Reddy District. He submitted an application for construction of house. Permission sought for came to be refused on the ground of pendency of the First Appeal No. 829 of 2003 on the file of this Court.

3. Respondents filed counter affidavit. It is stated in the counter affidavit that the application of the petitioner for construction of building came to be refused because of the pendency of A.S.No.829 of 2003. Para 4 of the counter affidavit reads as follows:

> "*It is respectfully submitted that in reply to paras 3 & 4 of the affidavit, I submit that it is true that the petitioner has made application to this respondent for obtaining building permission on 26-4-2005 in File NO. G/1393/Mis/2005, but due to pendency of litigations in Court in AS.No.829 of 2003 on the file of Hon'ble High Court in respect of the said property, thi respondent has rejected the said application vide Memo dated G/1779/2005, dt. 9.8.2005 and the same was intimated to the petitioner. The petitioner instead of getting the Court case settled and filing the application thereon has directly filed the above Writ Petition. IT is submitted that when the property on which the application is made for obtaining building permission is involved in Court cases, usually this respondent will not grant any permission so as to avoid further complications in the matter. The application of the petitioner is also rejected on the same ground. It is therefore submitted that there is no illegal or mala fide intention on the part of this respondent in rejecting the application of the petitioner. The petitioner has filed the above Writ Petition by making false allegations against this respondent and by suppressing material facts. Therefore, the above writ petition is not maintainable and liable to be dismissed in limini*"

4. Heard counsel for the petitioner and learned Standing counsel appearing for respondents.

5. Learned counsel for the petitioner submits that the respondent-Municipality considered the application of one K.Hari Singh who is similarly situated and granted permission for construction of the building subject to the out come of the result in A.S.No.829 of 2003 and therefore, the action of the respondents in not considering the application filed by the petitioner seeking permission to construct the house is

highly arbitrary and illegal. He further submits that the society to which the petitioner is a member has moved vacate stay petition in A.S.No.829 of 2003 and on the application of the society, interim injunction granted in favour of the appellant therein came to be vacated. He refers order passed by this Court in C.M.P.No. 10014 of 2003 and C.M.P.No. 17077 OF 2003 which reads as follows:

> "*The petitioner is the 4th defendant in the suit. The unsuccessful plaintiff in the suit is the appellant herein. The suit is filed for partition and separate possession of the suit schedule property. The said suit was dismissed. Aggrieved by the said dismissal, the present approval is preferred.*
>
> *This Court, by an order dated 30-4-2003 in CMP No. 10014 of 2003, granted interim injunction as prayed for and hence the present petition is filed by the fourth defendant in the suit seeking vacation of the above said injunction order.*
>
> *In view of the fact that there was no injunction against the petitioner herein during the pendency of the suit, we deem it appropriate to vacate the interim order dated 30/4/2003.*
>
> *Learned counsel for the appellant argued that the vacate stay petitioner is proposing to make certain construction in the land in question and in which case the vacate stay petitioner would come forward with a plea of claiming equities at a later point of time and even if the appellant succeeds in the appeal eventually, he will not be in a position to restore his possession. On the other hand, learned counsel for the vacate stay petitioner made a categoric statement that in the event of the success by the appellant in the appeal, the petitioner herein would not raise any claim of equities. The president of the Fourth defendant Welfare Association will file an affidavit incorporating the above aid statement, within a period of two weeks from today".*

6. It is further submitted by the learned counsel for the petitioner that the association filed affidavit as directed by the Division Bench.

7. Records placed before me disclose that the injunction secured by the appellant in A.S.No.829 of 2003 came to be vacated on the application of the association, to which the petitioner is a member.

8. In that view of the matter, the rejection of the building permission of the petitioner by the Respondent Municipality on the ground of pendency of the appeal being A.S.No.829 of 2003 is not justified.

9. In the result, the writ petition is disposed of directing the respondents to consider the representation of the petitioner seeking permission to construct the building dehors the pendency of the appeal being A.S.No.829 of 2003 and pass appropriate orders within six weeks from the date of receipt of a copy of this order.

_____

Justice B.Seshasayana Reddy

15th November, 2005.

C.C. in a week

B/o KM

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

W.P.No. 20209 OF 2005

15th November, 2005.